

CSD 1252 [08/23/01]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

(619) 557-5620

FILED

FAX: (619) 557-5536

APR 29 2008

TRANSMITTAL MEMORANDUM
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY

To: UNITED STATES DISTRICT COURT
880 Front Street, Suite 4290
San Diego, California 92101

'08 CV 0783 JM WMC

From: BARRY K. LANDER, Clerk District/Office No. 974-3

CASE NAME Anibal Mesala Silva		BANKRUPTCY NO.	
		07-3740-JM7	
		ADVERSARY NO.	
		APPEAL NO.	
		1	
BANKRUPTCY JUDGE		James W. Meyers	
DATE BANKRUPTCY FILED		7/16/07	
DATE OF ENTRY OF APPEALED ORDER:	NOTICE OF APPEAL FILED ON:	FEE PAID:	NOTICE OF REFERRAL TO USDC MAILED ON:
4/16/08	4/25/08	NO	April 28, 2008

DATED: April 28, 2008

Barry K. Lander, Clerk

By: Kurt Herbold, Deputy Clerk
Kurt Herbold

CSD 1252

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CSD 1251 [05/10/00]

FILED

April 28, 2008

CLERK, U.S. BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY**UNITED STATES BANKRUPTCY COURT**
SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

Anibal Mesala Silva

Debtor.

BANKRUPTCY NO. 07-3740-JM7

Anibal Mesala Silva (Appellant)

v.

Joseph Gaeta (Appellee)

BK APPEAL NO. 1
ASSIGNED TO JUDGE James W. Meyers**NOTICE OF REFERRAL OF APPEAL TO UNITED STATES DISTRICT COURT
COMBINED WITH SERVICE OF NOTICE OF APPEAL**

TO: Anibal Mesala Silva, P.O. Box 20732, El Cajon, CA 92021,
James L. Kennedy, P.O. Box 28459, San Diego, CA 92198,
Joseph Gaeta, 950 Pennsylvania Avenue N.W., Northwestern Bldg, 7th Floor, Washington, DC 20530
United States Trustee, Dept. of Justice, 402 W. Broadway, Ste. 600, San Diego, CA 92101

NOTICE IS HEREBY GIVEN that a Notice of Appeal has been filed by Anibal Mesala Silva with the Clerk of the Bankruptcy Court. By virtue of orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States District Court for the Southern District of California.

For further information, you may contact the Clerk of the United States District Court at 880 Front Street, Suite 4290, San Diego, California 92101 or by calling (619) 557-5600.

I hereby certify that on this date copies of the Notice of Appeal and the within Notice of Referral were mailed to the above-named person(s).

DATED: April 28, 2008

Barry K. Lander, Clerk

By: Kurt Herbold, Deputy Clerk
Kurt Herbold

Case # : 07-03740-JM/APBK
Debtor.: ANIBAL MESALA SILVA
Judge.: JAMES MEYERS
Trustee: JAMES KENNEDY
Chapter: APBK

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Filed : April 25, 2008 14:12:59
By : T SCHMIDT
Receipt: 198111
Amount : \$0.00

In re)
Anibal Mesala Silva) Case No: 07-03740-JM7
Debtor) Chapter 7

NOTICE OF APPEAL

Anibal Mesala Silva, Debtor, appeals under 28 U.S.C. Section 158 from the order of the bankruptcy judge denying Debtor's Motion Docketed as numbers 164, 165, 171, and 172, and requiring Debtor to show cause why this Chapter 7 should not be dismissed, signed by the judge on April 15, 2008.


**NOTICE TO THE CLERK: THE CLERK IS NOTIFIED THAT
DEBTOR/APPELLANT IS FILING TWO SEPARATE STATEMENTS OF
ELECTION TO EXERCISE HIS RIGHT UNDER 28 U.S.C. SECTION 158(a) TO
HAVE HIS APPEAL HEARD BY THE DISTRICT COURT SO THERE WILL BE
NO DOUBTS AS TO WHERE THIS APPEAL IS SUPPOSE TO GO.**

The names of all parties to the order appealed from and the names, addresses, and telephone numbers of their respective attorneys are as follows:

1. Joseph Gaeta
950 Pennsylvania Avenue. N.W., Northwestern Building, 7th Floor
Washington, DC 20530
Telephone No: 202-353-9062
2. David A. Ortiz
Office of the U.S. Trustee
402 West Broadway, Suite 600
San Diego, CA 92101
Telephone No: Unknown
3. Haeji Hong
Office of the U.S. Trustee
402 West Broadway, Suite 600
San Diego, CA 92101
Telephone No: 619-557-5013
4. James L. Kennedy, Chapter 7 Trustee
P.O. Box 28459
San Diego, CA 92198
Telephone No: 858-451-8859

5. Anibal Silva, Debtor
P.O. Box 20732
El Cajon, CA 92021
Telephone No: 619-920-4176

Dated: 4/25/08

Signed: 
Anibal Silva, Debtor/Appellant
P.O. Box 20732
El Cajon, CA 92021

THIS IS THE END OF THE NOTICE OF APPEAL

Following this notice of appeal are the copy of the Court's order, the separate notice of right to have appeal heard by the District court, and the two Separate Statements of Election.

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8 UNITED STATES BANKRUPTCY COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 In re

Bankruptcy No. 07-03740-M7

12
13 ANIBAL MESALA SILVA,

14 Debtor.

ORDER DENYING DEBTOR'S MOTIONS
DOCKETED AS NUMBERS 164, 165,
171 and 172, AND REQUIRING
DEBTOR TO SHOW CAUSE WHY THIS
CHAPTER 7 SHOULD NOT BE
DISMISSED
16
17

18 After a hearing on March 27, 2008, review of the history of this
19 case, the Debtor's prior Chapter 7, (07-00324-A7), and the documents
20 filed in support of and in opposition to the Debtor's motions docketed
21 as Numbers, 164, 171 and 172, the Court concluded that:

22 - Given the history and circumstances of this Case and the
23 Debtor's prior Case 07-00324-A7, the meeting of creditors required by
24 § 341(a) was scheduled and convened within a reasonable time after the
25 order for relief in this case, and is not "void";

26 - The Debtor has not yet complied with §521 and Fed.R.Bankr.P.
27 4002 to fulfill his duties as a Debtor, and

28 - The Debtor has provided no valid cause to reconsider the Order

1 Extending Time to Object to Discharge entered March 5, 2008 (No. 177),
2 or the Amended Minute Order Denying Debtor's Motions for Sanctions and
3 Protective Orders (No. 105); therefore,

4 IT IS ORDERED that:

5 1) Debtor's Motion For a Discharge (No. 164) is DENIED, without
6 prejudice;

7 2) Debtor's Motion to Void and Stay the § 341 Meeting of
8 Creditors (No. 171) is DENIED;

9 3) Debtor's Motion for Reconsideration (No. 172) of the Order
10 Granting an Extension of Time to File a Motion under § 707(b)(3) or
11 a Complaint under §§ 523 or 727 is DENIED;

12 4) Debtor's Motion (No. 165) to Set Aside Amended Minute Order
13 Denying Motion for Sanctions for Violation of the Automatic Stay and
14 Motion for Protective Order is DENIED;

15 IT IS FURTHER ORDERED that:

16 5) The Debtor is to SHOW CAUSE WHY THIS CHAPTER 7 CASE SHOULD NOT
17 BE DISMISSED, for failure to comply with the Court's Amended Minute
18 Order Dated October 30, 2007, requiring the Debtor to prepare and file
19 tax returns by November 6, 2007, and for failure to cooperate with the
20 Trustee as required by § 521. To avoid dismissal, the DEBTOR SHALL
21 FILE A WRITTEN EXPLANATION CONCERNING THE STATUS OF HIS TAX RETURNS
22 ON OR BEFORE APRIL 25, 2008.

23 DATED: APR 15 2008

24
25 
26 JAMES W. MEYERS, Judge
27 United States Bankruptcy Court
28

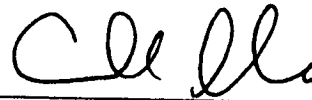
SEPARATE STATEMENT OF ELECTION

DEBTOR'S STATEMENT OF ELECTION

Anibal Mesala Silva, Debtor, pursuant to Sections 158(a) and 158(c)(1) of U.S. Title 28, hereby elects to exercise his right to have his appeal heard by a District Court.

NOTICE TO THE CLERK: DEBTOR/APPELLANT IS EXERCISING HIS RIGHT TO HAVE THIS APPEAL HEARD BY THE DISTRICT COURT, AND AT NO MOMENT, DEBTOR/APPELLANT IS AUTHORIZING OR CONSENTING THIS APPEAL TO GO TO THE BANKRUPTCY APPELLATE PANEL. THEREFORE, THIS APPEAL IS TO GO TO THE DISTRICT COURT ONLY.

Signed this 25th day of April 2008.

A handwritten signature in cursive script, appearing to read 'Anibal Silva', written over a horizontal line.

Anibal Silva, Debtor/Appellant

SEPARATE STATEMENT OF ELECTION

DEBTOR'S STATEMENT OF ELECTION

Anibal Mesala Silva, Debtor, pursuant to Sections 158(a) and 158(c)(1) of U.S. Title 28, hereby elects to exercise his right to have his appeal heard by a District Court.

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Signed this 25th day of April 2008.

A handwritten signature in cursive script, appearing to read 'Anibal Silva', written in black ink.

Anibal Silva, Debtor/Appellant

CERTIFICATE OF SERVICE

I, the undersigned whose address appears below, certify:

That I am, and at all time hereinafter mentioned was, more than 18 years of age;

That on April 25, 2008, I served a true copy of the within NOTICE OF APPEAL, NOTICE OF RIGHT TO HAVE APPEAL HEARD BY THE DISTRICT COURT, AND THE TWO SEPARATE STATEMENTS OF ELECTION, by:

U.S. First Class Mail

On the following persons:

Joseph Gaeta
Department of Justice
950 Pennsylvania Avenue, N.W.
Northwestern Building, 7th Floor
Washington, DC 20530


David R. Ortiz
Office of the U.S. Trustee
402 West Broadway, Suite 600
San Diego, CA 92101

Haeji Hong
Office of the U.S. Trustee
402 West Broadway, Suite 600
San Diego, CA 92101

James Kennedy, Chapter 7 Trustee
P.O. Box 28459
San Diego, CA 92198

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 4/25/08



Anibal Silva
P.O. Box 20732
El Cajon, CA 92021

SEPARATE NOTICE OF RIGHT TO HAVE APPEAL HEARD BY THE DISTRICT COURT

If a Bankruptcy Appellate Panel Service is authorized to hear this appeal, each party has a right to have the appeal heard by the District Court. The appellant may exercise this right only by filing a separate statement of election at the time of the filing of this notice of appeal. Any other party may elect, within the time provided in 28 U.S.C. Section 158(c), to have the appeal heard by the District Court.

If a child support creditor or its representative is the appellant, and if the child support creditor or its representative files the form specified in Section 304(g), no fee is required.

SEPARATE STATEMENT OF ELECTION

DEBTOR'S STATEMENT OF ELECTION

Anibal Mesala Silva, Debtor, pursuant to Sections 158(a) and 158(c)(1) of U.S. Title 28, hereby elects to exercise his right to have his appeal heard by a District Court.

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Signed this 25th day of April 2008.



Anibal Silva, Debtor/Appellant

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Signed this 25th day of April 2008.



Anibal Silva, Debtor/Appellant

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That on April 25, 2008, I served a true copy of the within NOTICE OF APPEAL, NOTICE OF RIGHT TO HAVE APPEAL HEARD BY THE DISTRICT COURT, AND THE TWO SEPARATE STATEMENTS OF ELECTION, by:

U.S. First Class Mail

On the following persons:

Beth A. Cluckey
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101

Jeffrey D. Cawdrey
Gordon & Rees LLP
101 West Broadway, Suite 2000
San Diego, CA 92101

Patrick C. Hargadon
Bankston & Richardson LLP
P.O. Box 1675
Dripping Springs, TX 78620

James Kennedy, Chapter 7 Trustee
P.O. Box 28459
San Diego, CA 92198

I certify under penalty of perjury that the foregoing is true and correct.

Executed on 4/25/08



Anibal Silva
P.O. Box 20732
El Cajon, CA 92021

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Anibal Mesala Silva

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **San Diego**
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Anibal Silva
P. O. Box 20732
El Cajon, CA 92021
619-920-4176

DEFENDANTS

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ATTORNEYS (IF KNOWN)

Joseph Gaeta
950 Pennsylvania Ave. NW 7th Floor
Washington, DC 20530

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PT | DEF | | PT | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 USC 158

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSL (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

